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14 Attorneys for the Plaintiffs

15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17

18 PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*
19 BILL LOCKYER, ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA, AND THE
20 DEPARTMENT OF WATER RESOURCES; and
THE STATE OF CALIFORNIA,

21 Plaintiffs,

22 v.

23 RELIANT ENERGY, INC.; RELIANT ENERGY
24 SERVICES, INC.; RELIANT ENERGY POWER
GENERATION, INC.; RELIANT RESOURCES,
25 INC.; RELIANT ENERGY COOLWATER, L.L.C.;
RELIANT ENERGY ELLWOOD, L.L.C.; RELIANT
26 ENERGY ETIWANDA, L.L.C.; RELIANT ENERGY
MANDALAY, L.L.C.; and RELIANT ENERGY
ORMOND BEACH, L.L.C.,

27 Defendants.
28

Case No.: C-02-1788

**COMPLAINT FOR ILLEGAL
ACQUISITIONS AND/OR
HOLDINGS OF ASSETS UNDER
§ 7 OF THE CLAYTON ACT;
INJUNCTION AND OTHER
EQUITABLE AND ANCILLARY
RELIEF, DIVESTITURE,
DAMAGES AND
RESTITUTION; VIOLATION OF
CALIFORNIA BUSINESS &
PROFESSIONS CODE § 17200**

JURY TRIAL DEMANDED

Clayton Act § 7, 15 U.S.C. § 18;
California Business & Professions
Code § 17200 *et seq.*; F.R.C.P. 38(b)

1 Plaintiffs, People of the State of California, the State of California, on its own behalf and
2 as *parens patrie* on behalf of its citizens, and the California Department of Water Resources, by
3 and through their Attorney General, Bill Lockyer, allege the following on information and belief:

4 **INTRODUCTION**

5 1. This action seeks to remedy defendants’ illegal acquisition and continued holding
6 of California’s electric power plants. Defendants are now some of the major players in California
7 wholesale electricity markets. Plaintiffs seek, *inter alia*, an injunction that requires defendants to
8 divest enough power plants to restore competition in the relevant market for the spot supply of
9 wholesale electricity and reserves in Southern California during higher demand.

10 **PARTIES**

11 **The Plaintiffs**

12 2. Bill Lockyer is the Attorney General of the State of California and is the chief law
13 officer of the State (Cal. Const., Art. 5 § 13). The Clayton Act authorizes the Attorney General
14 to bring suit to enjoin and remedy violations of Section 7 of the Clayton Act on behalf of the State
15 of California, its citizens and the general welfare of the State of California. California Business &
16 Professions Code § 17204 also authorizes the Attorney General to prosecute any business act or
17 practice prohibited by California Business & Professions Code § 17200.

18 3. The State of California buys electricity on behalf of itself, its departments and its
19 agencies.

20 4. The Department of Water Resources (“DWR”) is a state agency and is a purchaser
21 of electricity on behalf of itself and the State of California.

22 **The Reliant Defendants**

23 5. Defendant RELIANT ENERGY, INC. (“RELIANT”) is a Delaware corporation
24 doing business through its subsidiaries in California.

25 6. Defendant RELIANT ENERGY SERVICES, INC. (together with its predecessor
26 and successor entities, “RELIANT ENERGY SERVICES”), formerly NorAm Energy Services,
27 Inc., is a Delaware corporation doing business in California.

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1 7. Defendant RELIANT RESOURCES, INC. (“RELIANT RESOURCES”) is a
2 Delaware corporation doing business through its subsidiaries in California.

3 8. Defendant RELIANT ENERGY POWER GENERATION, INC. (“RELIANT
4 ENERGY POWER GENERATION”) is a Delaware corporation doing business through its
5 subsidiaries in California. RELIANT ENERGY POWER GENERATION is a wholly-owned
6 subsidiary of defendant RELIANT RESOURCES.

7 9. Defendant RELIANT ENERGY COOLWATER, L.L.C. (together with its
8 predecessor and successor entities, “RELIANT COOLWATER”), formerly Alta Power
9 Generation, L.L.C., is a Delaware limited liability company doing business in California.
10 RELIANT COOLWATER is a wholly-owned, indirect subsidiary of defendant RELIANT
11 ENERGY POWER GENERATION.

12 10. Defendant RELIANT ENERGY ELLWOOD, L.L.C. (“RELIANT ELLWOOD”)
13 (together with its predecessor and successor entities, “RELIANT ELLWOOD”), formerly Oeste
14 Power Generation, L.L.C., is a Delaware limited liability corporation doing business in California.
15 RELIANT ELLWOOD is a wholly-owned, indirect subsidiary of defendant RELIANT ENERGY
16 POWER GENERATION.

17 11. Defendant RELIANT ENERGY ETIWANDA, L.L.C. (together with its
18 predecessor and successor entities, “RELIANT ETIWANDA”), formerly Mountain Vista Power
19 Generation, L.L.C., is a Delaware limited liability corporation doing business in California.
20 RELIANT ETIWANDA is a wholly-owned, indirect subsidiary of defendant RELIANT
21 ENERGY POWER GENERATION.

22 12. Defendant RELIANT ENERGY MANDALAY, L.L.C. (together with its
23 predecessor and successor entities, “RELIANT MANDALAY”), formerly Ocean Vista Power
24 Generation, L.L.C., is a Delaware limited liability corporation doing business in California.
25 RELIANT MANDALAY is a wholly-owned, indirect subsidiary of defendant RELIANT
26 ENERGY POWER GENERATION.

27 13. Defendant RELIANT ENERGY ORMOND BEACH, L.L.C. (together with its
28 predecessor and successor entities, “RELIANT ORMOND”), formerly Ormond Beach Power

1 Generation, L.L.C., is a Delaware limited liability corporation doing business in California.

2 RELIANT ORMOND is a wholly-owned, indirect subsidiary of defendant RELIANT ENERGY
3 POWER GENERATION.

4 14. Unless otherwise alleged, when this Complaint refers to any act of the defendants,
5 such allegation shall mean that each defendant acted individually and jointly with the other
6 defendants named in the Complaint.

7 15. Unless otherwise alleged, when this Complaint refers to any act of any corporate
8 or other business defendant, such allegation shall mean that such corporation or other business
9 defendant did the acts alleged in this Complaint through its officers, directors, employees, agents,
10 or representatives while they were acting within the actual or ostensible scope of their authority.

11 16. At all relevant times alleged in this Complaint, each of the defendants has acted as
12 an agent, representative, or employee of each of the other defendants and has acted within the
13 course and scope of said agency, representation or employment.

14 **JURISDICTION AND VENUE**

15 17. This action arises under Section 7 of the Clayton Act, as amended, 15 U.S.C. §18,
16 and Section 17200 *et seq.* of the California Business & Professions Code. This Court has
17 jurisdiction under Section 4 of the Clayton Act, 15 U.S.C. § 15, Section 4(c) of the Clayton Act,
18 15 U.S.C. § 15(c), and Section 16 of the Clayton Act, 15 U.S.C. § 26.

19 18. Defendants are engaged in interstate commerce and in activities substantially
20 affecting interstate commerce. Defendants receive gas from interstate pipelines and use it to sell
21 electricity in California.

22 19. This Court has jurisdiction over the subject matter of this action and jurisdiction
23 over the parties under 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337. Venue is proper under
24 28 U.S.C. § 1391(c) because the causes of action, liability, and many violations of the law
25 occurred in the City and County of San Francisco.

26 20. This Court has supplemental jurisdiction over plaintiffs' claims arising from alleged
27 violations of California Business & Professions Code § 17200, *et seq.* under 28 U.S.C. § 1367(a).
28 The plaintiffs' claims under California Business & Professions Code § 17200 are so related to the

1 plaintiffs' claims under Section 7 of the Clayton Act (15 U.S.C. § 18) that both form part of the
2 same case or controversy under Article III of the United States Constitution, as described below.

3 NATURE OF THE ACTION

4 21. In 1998, defendants acquired electricity power plants in California to provide
5 electricity for the newly deregulated California electricity markets. Defendants bought these
6 plants from Southern California Edison Company ("SCE"), one of the three major regulated
7 California utilities.

8 22. By at least 1999, the acquisitions were finalized, and defendants became some of
9 the major providers of the spot supply of wholesale electricity and reserves in Southern California
10 during higher demand.

11 23. By at least sometime in 2000, the defendants started to withhold energy and/or
12 raise the price of electricity in the Southern California market for the spot supply of wholesale
13 electricity and reserves during higher demand.

14 24. Defendants' acquisitions and continued holdings of power plants has substantially
15 lessened, and will likely continue to lessen, competition in the Southern California market for the
16 spot supply of wholesale electricity and reserves during higher demand, violating Section 7 of the
17 Clayton Act.

18 THE ACQUISITIONS

19 25. In or about April 1998, RELIANT COOLWATER acquired from SCE an
20 electricity power plant in Daggett, California. The plant has four (4) electricity generating units
21 with a total capacity of about 628 MW.

22 26. In or about April 1998, RELIANT ELLWOOD acquired from SCE an electricity
23 power plant in Goleta, California. The plant has one (1) electricity generating unit with a capacity
24 of about 48 MW.

25 27. In or about April 1998, RELIANT ETIWANDA acquired from SCE an electricity
26 power plant in Rancho Cucamonga, California. The plant has five (5) electricity generating units
27 with a total capacity of about 1,030 MW.

1 28. In or about April 1998, RELIANT MANDALAY acquired from SCE an electricity
2 power plant in Oxnard, California. The plant has one (1) electricity generating unit with a
3 capacity of about 570 MW.

4 29. In or about June 1998, RELIANT ORMOND acquired from SCE an electricity
5 power plant in Oxnard, California. The plant has two (2) electricity generating units with a total
6 capacity of about 1,500 MW.

7 **TRADE AND COMMERCE**

8 30. Defendants are major suppliers of spot wholesale electricity and reserves in
9 Southern California during higher demand.

10 31. Through their acquisitions, defendants acquired and still hold the plants necessary
11 for much of the spot supply of wholesale electricity and reserves in Southern California during
12 higher demand.

13 **THE RELEVANT MARKET**

14 32. Purchasers of the spot supply of wholesale electricity and reserves during higher
15 demand in Southern California cannot and do not switch to other products in response to an
16 increase in the price of that electricity.

17 33. There is limited electricity transmission capacity into California. During higher
18 demand, the transmission lines into California are fully loaded, making it virtually impossible to
19 send additional electricity into California from other sources. Also, potential imports are often
20 constrained by the exporters' own local needs.

21 34. During higher demand, the transmission lines (*i.e.*, Path 15) between Northern and
22 Southern California are fully loaded, making it virtually impossible to send more electricity from
23 North (*i.e.*, NP 15) to South (*i.e.*, SP15) or *vice versa*.

24 35. During higher demand, there is no substitute for spot electricity and reserves
25 because other sources of electricity (*e.g.*, baseload electricity) are used to full capacity, and
26 purchasers have no choice but to buy electricity like that of the defendants.

1 36. The spot supply of wholesale electricity and reserves in Southern California during
2 higher demand is a relevant market (“the Market”) (*i.e.*, a line of commerce and a section of the
3 country) under Section 7 of the Clayton Act.

4 **MARKET SHARES AND STRUCTURE**

5 37. As a result of their acquisitions of five (5) plants, defendants captured
6 approximately twenty-eight percent (28%) of the Market, controlling about 3,776 MW of
7 capacity.

8 **ENTRY**

9 38. Entry into the Market would not be timely, likely, and sufficient in its magnitude,
10 character and scope to deter or counteract the anti-competitive effects that have occurred and are
11 likely to occur from defendants’ accumulation of holdings and market power.

12 39. Sufficient entry into the Market by building new plants is not likely to occur in
13 sufficient time to protect California from defendants’ current market power. Similarly, significant
14 entry by building new lines to transmit electricity from outside California is unlikely because it
15 would require a myriad of difficult, costly, and time consuming regulatory, environmental and
16 safety approvals.

17 **ANTI-COMPETITIVE EFFECTS**

18 40. As a result of acquiring the plants, defendants can increase the price and/or
19 withhold output of spot electricity in the Market. By at least 2000, defendants could (and did)
20 exploit their market power to raise prices and withhold output in the Market.

21 41. Indeed, in just one month (August 2000) defendants charged about 100% to 200%
22 more than what prices would have been had their plants been owned more diversely.

23 42. As a result of acquiring and holding the plants, the defendants are more likely to
24 coordinate their pricing, production and withholding of electricity with other electricity generators
25 in the Market.

26 **INJURY**

27 43. The State of California (as well as State departments and agencies) purchased
28 electricity directly from defendants.

44. DWR bought electricity directly from defendants.

45. As a result of defendants' unlawful acquisitions and/or holdings, the State of California, its consumers, departments and agencies, and DWR paid more for electricity than they would have had the Market been more diverse.

46. As a result of defendants' unlawful acquisitions and/or holdings, the State of California and its citizens were injured and continued to be injured by, among other things, widespread brown-outs and disruption in the California economy.

47. As a result of defendants' unlawful acquisitions and/or holdings, the State of California, its consumers, departments, and agencies, and DWR have all suffered and will continue to suffer irreparable harm due to the substantial lessening of competition in the Market.

48. As a result of defendants' acquisitions and/or holdings, defendants were able to reap and are continuing to reap unlawful profits.

COUNT 1

Equitable Relief for Violation of Section 7 of the Clayton Act:

Divestiture and Disgorgement

49. Defendants' acquisitions and continued holdings of electrical power plants violates Section 7 of the Clayton Act. Injunctive relief, including divesting enough plants to restore competition to the marketplace, should be required. In addition, defendants should be ordered to disgorge all illegal profits that they made from the plants.

50. Defendants' continuing wrongful conduct, as alleged above, unless and until restrained by an Order of this Court, will further cause great and irreparable harm to the State of California, its consumers, departments, and agencies and DWR.

COUNT 2

Violation of Section 7: Damages

51. Beginning by at least sometime in 2000, the defendants exercised (and still exercise) market power from the illegal acquisition of power plants in Southern California, damaging the State of California, its departments, agencies and DWR. Defendants' conduct

caused, among other things, higher energy prices and electricity shortages. The State of California, its departments, agencies and DWR request damages according to proof.

COUNT 3

Violation of Cal. Business & Professions Code § 17200

52. Section 17200 of the California Business & Professions Code prohibits unfair competition, which includes any unlawful or unfair business act(s) or practices(s).

53. Section 7 of the Clayton Act, 15 U.S.C. § 18, provides that no person engaged in commerce shall acquire the assets of another person engaged in commerce where the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly.

54. Defendants engaged in unlawful and unfair competition, and still do so, violating Section 17200 of the California Business & Professions Code. These violations include, but are not limited to:

a. Defendants acquired and continue to hold power plants in Southern California, reducing competition in the Market, in violation of Section 7 of the Clayton Act;

b. Defendants obtained and exercised market power to withhold electricity from the Market and raise electricity prices, in violation of Section 7 of the Clayton Act; and

c. Defendants obtained, held and exercised market power to withhold electricity from the Market causing brown-outs and disrupting the economy, in violation of Section 7 of the Clayton Act.

55. Defendants' continuing wrongful conduct, as alleged above, unless and until restrained by an Order of this Court, will further cause great and irreparable harm to the State of California, its consumers, departments and agencies, and to DWR.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, as follows:

1. For an injunction, as authorized by the Clayton Act, ordering divestiture and other relief as is necessary to prevent irreparable harm to the State of California and its residents;

1 2. For an injunction, as authorized by the Clayton Act, ordering defendants not to
2 buy or sell power plants or assets in California without adequate notification to the Plaintiffs;

3 3. For an order directing defendants to disgorge all illegal profits gained from the
4 unlawful acquisition and holding of California power plants in violation of Section 7 of the
5 Clayton Act;

6 4. That damages be awarded according to proof under the Clayton Act, and that such
7 damages be trebled;

8 5. For an injunction, as authorized by Cal. Bus. & Prof. Code § 17203, enjoining
9 defendants, their successors, agents, representatives, employees and all persons acting in concert
10 with them, from engaging in unfair competition as defined in Cal. Bus. & Prof. Code § 17200,
11 including but not limited to the types of acts or practices alleged herein;

12 6. For an injunction, as authorized by Cal. Bus. & Prof. Code § 17203, ordering
13 divestiture and such other relief as necessary to prevent irreparable harm to California's ratepayers
14 and taxpayers;

15 7. For an order directing defendants to disgorge all monies, including any profits,
16 they gained as a result of their violations of Cal. Bus. and Prof. Code § 17200, in an amount
17 according to proof;

18 8. For an order assessing civil penalties of two thousand five hundred dollars
19 (\$2,500) against each defendant for each violation of Cal. Bus. and Prof. Code § 17200, as
20 authorized by § 17206, in an amount according to proof;

21 9. For an order directing defendants to pay restitution in an amount according to
22 proof as authorized by Cal. Bus. and Prof. Code § 17200;

23 10. For costs of suit incurred herein, including reasonable attorneys fees; and

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1 11. For such other further relief as the nature of the case may require and the Court
2 deems just and proper.

3 Dated: April 15, 2002.

4 Respectfully,

5 BILL LOCKYER

6 Attorney General

7 MORRIS BEATUS

8 Senior Assistant Attorney General

9 KEN ALEX

10 Supervising Deputy Attorney General

11 PAULA QUINTILIANI

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19 By: _____

20 Paula Quintiliani

21 Deputy Attorney General

22 Attorneys for Plaintiffs

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JURY DEMAND UNDER F.R.C.P. 38(b)

Plaintiffs request a jury trial for all issues properly determined by a jury.

Dated: April 15, 2002.

Respectfully,

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